

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03

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FM AMEMBASSY BONN

TO SECSTATE WASHDC PRIORITY 2000

INFO USMISSION BERLIN

USMISSION NATO BRUSSELS

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L BONN 06559

E.O. 11652: GDS

TAGS: PGOV, WB, GW, US, FR, UK

SUBJECT: FRG FEDERAL CONSTITUTIONAL COURT (FCC) AND
BERLIN

1. STATE SECRETARY FRANK ASKED THREE ALLIED AMBASSADORS TO MEET WITH HIM ON ABOVE SUBJECT ON APRIL 24. REFERRING TO ALLIED AIDE MEMOIRE OF MARCH 12 ON BRUECKMANN CASE, FRANK SAID THAT THE FCC WAS CONCERNED ABOUT THE IMPLICATION IN THE AIDE MEMOIRE THAT THE COURT WOULD NOT HAVE FORMAL ACCESS TO ANY DOCUMENTS EMINATING FROM BERLIN CASES. FRANK SAID THAT THE FCC HAD CONSEQUENTLY EXPRESSED THE HOPE THAT A "PRACTICAL SOLUTION" COULD BE FOUND IN WHICH THE COURT WOULD BE ABLE TO OBTAIN REQUESTED DOCUMENTS IN SOME BERLIN CASES AND PARTICULARLY IN THOSE INVOLVING CONSTITUTIONAL QUESTIONS. FRANK SAID HIS REQUEST, THEN, WAS THAT THE AMBASSADORS AGREE TO HAVE THE BONN GROUP STUDY THE MATTER, PERHAPS BEING CHARGED TO FIND A PRACTICAL, NON-DOGMATIC SOLUTION.

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2. THE AMBASSADOR RESPONDED THAT THE BONN GROUP COULD

TAKE A LOOK AT THE PROBLEM BUT THAT AMONG THE VARIOUS TYPES OF CONCEIVABLE CASES IT WAS PRECISELY IN THOSE INVOLVING CONSTITUTIONAL QUESTIONS WHERE THE FUNDAMENTAL DIFFICULTY LAY. AMBASSADORS HENDERSON AND SAUVAGNARGUES AGREED AND, UPON INSISTENCE OF THE THREE AMBASSADORS, THE TERMS OF REFERENCE FOR BONN GROUP CONSIDERATION OF MATTER IS TO BE LIMITED TO FACT OF FCC REQUEST, WITH NO FURTHER MANDATE TO "FIND PRACTICAL SOLUTION".

3. COMMENT: AMBASSADORS MADE USE OF OPPORTUNITY TO EMPHASIZE ALLIED LEGAL POSITION AND TO STRESS THAT WHATEVER KAMMERGERICHT DOES IN BRUECKMANN CASE IT MUST NOT RELY ON RECENT FCC DECISION. FRANK INDICATED THAT BRUECKMANN WAS CLOSED MATTER AS FAR AS FRG WAS CONCERNED, AND SAID HE DID NOT THINK IT POSSIBLE THAT DIFFERING LEGAL VIEWS OF ALLIES AND OF FCC COULD EVER BE RESOLVED. REGARDING MOTIVE FOR FRANK REQUESTING MEETING, WE KNOW THAT MINISTERS SCHEEL, GENSCHER AND JAHN MET RECENTLY ON BRUECKMANN CASE (IN A SOMETIMES-HEATED SESSION WE ARE TOLD) WITH FCC PRESIDENT BENDA, AND OUR BEST GUESS IS THAT SCHEEL MUST HAVE MADE SOME KIND OF COMMITMENT TO MAKE A HIGH-LEVEL APPROACH TO THE ALLIES. HILLENBRAND

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